HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No.3385 of 2007

Between:

The Government of A.P. rep. by its
Principal Secretary, Higher Education Department,
Secretariat, Hyderabad and another

… Petitioners

And

Sri Ch. Narayana Raju and another

… Respondents

:: ORDER::

Counsel for the Petitioners: Government Pleader for Services – I.

April 23, 2007

Per G.S. Singhvi, CJ

This petition is directed against order dated 31-10-2006 passed by the Andhra Pradesh Administrative Tribunal (for short, 'the Tribunal') in O.A.No.2921 of 2001.

The respondents were initially appointed as Demonstrators (Ceramic Technology) in the Department of Technical Education. In the year 1982, the State Government issued G.O.Ms.No.948, LEN & TE Department, dated 23-12-1982 for unification of the cadres of Demonstrator and Assistant Lecturer into a single cadre of Associate Lecturer. As a sequel to this, the respondents were re-designated as Lecturers and their pay was fixed in the AICTE scale prescribed for the post of Lecturers. Subsequently, the State Government issued Circular Memo dated 8-1-2001 for

re-fixation of the pay of the respondents on the premise that they were not entitled to the scale prescribed for the post of Lecturer, which could be given only to the degree holders. The Director of Technical Education, Andhra Pradesh issued consequential order dated 10-4-2001.

The respondents challenged Circular Memo dated 8-1-2001 and order dated 10-4-2001 in O.A.No.2921 of 2001, which was allowed by the Tribunal on the ground that before re-fixing their pay and ordering recovery of the alleged excess amount paid to them, the non-applicants (the petitioners herein) did not give action oriented notice and opportunity of hearing to the applicants (the respondents herein).

Learned Government Pleader for Services argued that the order under challenge is liable to be set aside because while quashing re-fixation of the respondent's pay, the Tribunal overlooked

the starking fact that the minimum qualification which could entitle a lecturer to get higher pay scale is degree in the concerned subject and none of the respondents possess that qualification.

We have considered the submissions of the learned Government Pleader, but have not felt persuaded to set aside the order under challenge. It cannot be denied that the direction given by the State Government for re-fixation of the respondents' pay would have resulted in reduction in the total emoluments payable to them. To put it differently, the decision of the government would have adversely affected the right of the respondents to receive the particular amount of salary. It is also the admitted position that before ordering re-fixation of the pay of the respondents and consequential recovery of the alleged excess amount paid to them, the petitioners did not give action oriented notice and opportunity of hearing to the respondents to represent their cause. Therefore, the view taken by the Tribunal on the legality of the decision of the government cannot be termed as erroneous.

The applicability of the rule of hearing in purely administrative matters has been fully recognized by the Supreme Court in **State of Orissa v. Dr. (Miss) Binapani Dei and others**[1], **Sayeedur Rehman v. State of Bihar**[2], **Maneka Gandhi v. Union of India**[3], **S.L. Kapoor v. Jagmohan**[4] and **Swadeshi Cotton Mills v. Union of India**[5].

In **Dr.Binapani Dei**'s case (supra) the Supreme Court considered the question whether the respondent could have been retired from service on the basis of an alteration made in her date of birth recorded in her service book without giving her notice and opportunity of hearing. While affirming the judgment of the Orissa

High Court, which quashed the retirement of the respondent on the ground of violation of the rules of natural justice, the Supreme Court laid down the following propositions:

1) An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is however under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom in enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed: it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.
2) It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made

consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence.

In **Sayeedur Rehman** (supra) the Supreme Court considered the question whether the order passed by the school management for grant of monetary benefits to the appellant could be withdrawn without giving him notice and opportunity of hearing and held:

> "This unwritten right of hearing is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the rival contestants. This right has its roots in the notion of fair procedure. It draws the attention of the party concerned to the imperative necessity of not overlooking the other side of the case before coming to its decision, for nothing is more likely to conduce to just and right decision than the practice of giving hearing to the affected parties. … The omission of express requirement of fair hearing in the rules or other source of power claimed for reconsidering an order is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of parties."

In **Maneka Gandhi v. Union of India** (supra) the Constitution Bench of the Supreme Court highlighted the importance of the rules of natural justice in the following words:

> "Although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature. The principle of audi alteram partem, which mandates that no one shall be condemned unheard, is part of the rules of natural justice.
>
> Natural justice is a great humanizing principle intended to invest law with fairness and to secure justice and over the

> years it has grown into a widely pervasive rule affecting large areas of administrative action. The inquiry must, always be: does fairness in action, demand that an opportunity to be heard should be given to the person effected?
>
> The law must now be taken to be well-settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable."

By applying the ratio of the above noted judgments to the facts of this case, we hold that the Tribunal did not commit any illegality by quashing the decision of the government and the writ petition is liable to be dismissed summarily. Ordered accordingly.

As a sequel to dismissal of the writ petition, WPMP No.4322 of 2007 filed by the petitioners for interim relief is also dismissed.

G.S. SINGHVI, CJ

April 23, 2007

C.V. NAGARJUNA REDDY, J

svs

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[1] AIR 1967 SC 1269

[2] AIR 1973 SC 239

[3] AIR 1978 SC 597

[4] AIR 1981 SC 136

[5] AIR 1981 SC 818